



**THE ATTORNEY GENERAL
OF TEXAS**

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October 26, 1973

The Honorable Jerry Woodlock
County Attorney
Cooke County
P. O. Box 911
Gainesville, Texas 76240

Letter Advisory No. 64

Re: Dual employment-
hospital adminis-
trator and city
mayor

Dear Mr. Woodlock:

In your letter requesting our opinion you point out that an individual, who has been appointed and served as Administrator of the Muenster Memorial Hospital District for a number of years, for which he is paid, recently was elected to the office of Mayor of the City of Muenster. This latter office pays an emolument of \$90 per year.

Your question is whether or not this "dual employment" is in violation of § 40 of Article 16 of the Constitution which, as amended in 1972, prohibits, with a number of exceptions, one person holding or exercising at the same time, more than one "civil office of emolument."

The office of Mayor of a city is a civil office within the meaning of this provision and, if there is a salary attached to it, it is a civil office of emolument. Willis v. Potts, 377 S. W. 2d 622 (Tex. 1964). We have found no case specifically holding that the position of Administrator of a hospital district is a civil office. Compare Attorney General Opinion M-409 (1969); Temple Independent School District v. Proctor, 97 S. W. 2d 1047 (Tex. Civ. App., Austin, 1936, err. ref'd); Boyett v. Calvert, 467 S. W. 2d 205 (Tex. Civ. App., Austin, 1971, err. ref'd., n. r. e.); State v. Mycue, 481 S. W. 2d 476 (Tex. Civ. App., San Antonio, 1972, no writ). Whether it is will depend upon applying the criteria suggested in Attorney General Letter Advisory No. 63 (1973) to the duties and responsibilities of the position.

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In 1972, the Constitution was amended to add to § 40 of Article 16 the following exception:

"State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns or other local government districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies." (emphasis added)

It makes no difference under which chapter of Title 28, V. T. C. S., the City of Muenster is organized; in our opinion, its mayor is a member of its governing body. See Articles 977, 1145 and 1154, V. T. C. S.

It is our opinion, therefore, that the Mayor of the City of Muenster is not barred from occupying, at the same time, the position of Administrator of the hospital district. However, he may receive no salary for his services as mayor.

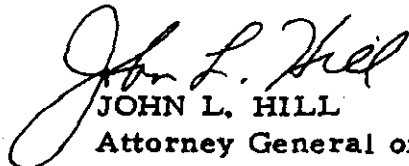
Even though holding both positions may not be barred by § 40 of Article 16, it must be determined whether the two positions would be incompatible under the common law rule prohibiting one person from holding two such offices. See Thomas v. Abernathy County Line Independent School District, 290 S. W. 152 (Tex. Comm. 1927); Attorney General Opinions H-10 (1973), H-117 (1973). Pruitt v. Glen Rose Ind. School Dist. No. 1, 84 S. W. 2d 1004 (Tex. 1935), holds that the occupant of one office who assumes another, incompatible with the first, will be held to have vacated the first.

We have examined the general and special laws under which the Muenster Hospital District was created (Article 9, § 9, Constitution of

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Texas; Acts 1965, 59th Leg., ch. 477, p. 984; Acts 1967, 60th Leg., ch. 541, p. 1206) and cannot say that, as a matter of law, they create any incompatibility.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee